

# HOUSE BILL No. 1406

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-2-21.

**Synopsis:** Insurer use of credit information. Applies requirements to an insurer's use of credit information in the underwriting of personal property and casualty insurance.

**Effective:** July 1, 2003.

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### Ripley

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January 14, 2003, read first time and referred to Committee on Insurance, Corporations and Small Business.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1406

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 27-2-21 IS ADDED TO THE INDIANA CODE AS  
2       A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3       1, 2003]:

4       **Chapter 21. Use of Credit Information**

5       **Sec. 1. As used in this chapter, "adverse action" means:**

- 6               (1) a denial or cancellation of;  
7               (2) an increase in a charge for; or  
8               (3) a reduction or other adverse or unfavorable change in the  
9               terms of coverage or amount of;

10       **insurance in connection with the underwriting of a personal**  
11       **insurance policy.**

12       **Sec. 2. As used in this chapter, "affiliate" means a company that**  
13       **controls, is controlled by, or is under common control with another**  
14       **company.**

15       **Sec. 3. As used in this chapter, "applicant" means an individual**  
16       **who has applied with an insurer for coverage under a personal**  
17       **insurance policy.**



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1       Sec. 4. As used in this chapter, "commissioner" refers to the  
2 commissioner appointed under IC 27-1-1-2.

3       Sec. 5. As used in this chapter, "consumer" means an:

4       (1) insured whose:

5       (A) credit information is used; or

6       (B) insurance score is calculated;

7       in the underwriting or rating of a personal insurance policy;  
8       or

9       (2) applicant for a personal insurance policy.

10       Sec. 6. As used in this chapter, "consumer reporting agency"  
11 means a person that, for a monetary fee, dues, or on a cooperative  
12 nonprofit basis, regularly engages in the practice of assembling or  
13 evaluating consumer credit information or other information  
14 concerning consumers to furnish consumer reports to third parties.

15       Sec. 7. As used in this chapter, "credit information" means  
16 credit related information:

17       (1) derived from a credit report;

18       (2) found on a credit report; or

19       (3) provided on an application for a personal insurance policy.

20       The term does not include information that is not credit related,  
21 regardless of whether the information is contained in a credit  
22 report or in an application or is used to calculate an insurance  
23 score.

24       Sec. 8. As used in this chapter, "credit report" means a written,  
25 an oral, or another communication of information by a consumer  
26 reporting agency concerning a consumer's credit worthiness, credit  
27 standing, or credit capacity that is used or expected to be used or  
28 collected as a factor to determine personal insurance policy  
29 premiums, eligibility for coverage, or tier placement.

30       Sec. 9. As used in this chapter, "department" means the  
31 department of insurance created by IC 27-1-1-1.

32       Sec. 10. As used in this chapter, "insurance score" means a  
33 number or rating that is derived from an algorithm, a computer  
34 application, a model, or another process that is based on credit  
35 information to predict the future insurance loss exposure of an  
36 individual consumer.

37       Sec. 11. As used in this chapter, "insured" means an individual  
38 entitled to coverage under a personal insurance policy.

39       Sec. 12. As used in this chapter, "insurer" means an insurer (as  
40 defined in IC 27-1-2-3) that issues a personal insurance policy.

41       Sec. 13. As used in this chapter, "personal insurance policy"  
42 means a policy that:

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- (1) provides one (1) or more of the kinds of insurance described in Class 2 or Class 3 of IC 27-1-5-1; and  
 (2) is underwritten on an individual basis for personal, family, or household use.

**Sec. 14. This chapter does not apply to commercial insurance.**

**Sec. 15. An insurer that uses credit information to underwrite or rate risks shall not do the following:**

(1) Use an insurance score that is calculated using income, gender, address, ZIP code, ethnic group, religion, marital status, or nationality of the consumer as a factor.

(2) Deny, cancel, or not renew a personal insurance policy solely on the basis of credit information.

(3) Base an insured's renewal rate for a personal insurance policy solely on credit information.

(4) Take an adverse action against a consumer solely because the consumer does not have a credit card account.

(5) Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating a personal insurance policy, unless the insurer does one (1) of the following:

(A) Presents to the commissioner information that the absence or inability relates to the risk for the insurer and treats the consumer as approved by the commissioner.

(B) Treats the consumer as if the consumer had neutral credit information as defined by the insurer.

(6) Take an adverse action against a consumer based on credit information unless the insurer obtains and uses:

(A) a credit report issued; or

(B) an insurance score calculated;

not more than ninety (90) days after the date the personal insurance policy is first written or the renewal is issued.

(7) Use credit information unless the insurer recalculates the insurance score or obtains an updated credit report at least every thirty-six (36) months from the last date the insurer obtained current credit information for the insured. However, the following apply:

(A) At annual renewal, upon the request of an insured or the insured's agent, the insurer shall re-underwrite and re-rate the personal insurance policy based on a current credit report or insurance score unless one (1) of the following applies:

(i) The insurer's treatment of the consumer is approved

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by the commissioner.

(ii) The insured is in the most favorably priced tier of the insurer, within a group of affiliated insurers.

(iii) Credit information was not used for underwriting or rating the insured when the personal insurance policy was initially written.

(iv) The insurer reevaluates the insured based on underwriting or rating factors other than credit information at least every thirty-six (36) months after a personal insurance policy is issued.

This clause does not require an insurer to recalculate an insurance score or obtain an updated credit report of a consumer more frequently than one (1) time in a twelve (12) month period.

(B) An insurer may obtain current credit information upon the renewal of a personal insurance policy when renewal occurs more frequently than the thirty-six (36) month periods specified in this subdivision that begin on the last date the insurer obtained credit information for the insured, if consistent with the insurer's underwriting guidelines.

(8) Use the following as a negative factor in an insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a personal insurance policy:

(A) A credit inquiry not initiated or requested by the consumer for the consumer's own credit information.

(B) An inquiry:

(i) relating to; and

(ii) identified on the consumer's credit report as an inquiry relating to;

insurance coverage.

(C) A collection account:

(i) with a medical industry code; and

(ii) identified as a collection account with a medical industry code on the consumer's credit report.

(D) Multiple lender inquiries:

(i) coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry; and

(ii) made within thirty (30) days of one another.

However, one (1) inquiry described in this clause may be

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considered.

(E) Multiple lender inquiries:

(i) coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry; and

(ii) made within thirty (30) days of one another.

However, one (1) inquiry described in this clause may be considered.

Sec. 16. (a) If:

(1) a determination is made through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. 1681i(a)(5) that the credit information of a current insured was incorrect or incomplete; and

(2) the insurer receives notice of the determination from the consumer reporting agency or the insured;

the insurer shall re-underwrite and re-rate the insured not more than thirty (30) days after receiving the notice.

(b) After an insurer re-underwrites or re-rates an insured as described in subsection (a), the insurer shall:

(1) make necessary adjustments, consistent with the insurer's underwriting and rating guidelines; and

(2) if the insurer determines that the insured has overpaid premium, refund to the insured the amount of overpayment calculated back to the shorter of the:

(A) immediately preceding twelve (12) months of coverage; or

(B) actual policy period.

Sec. 17. (a) If an insurer uses credit information in underwriting or rating a consumer, the insurer or the insurer's agent shall disclose, either on the insurance application or at the time the insurance application is taken, that the insurer may obtain credit information in connection with the application. The disclosure must be:

(1) written; or

(2) provided to the consumer in the same medium as the application for insurance.

The insurer is not required to provide the disclosure statement required under this section to an insured on a renewal policy if the insured has previously been provided a disclosure statement.

(b) Use of the following sample disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use



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a credit based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

**Sec. 18. (a)** If an insurer takes an adverse action based on credit information, the insurer shall:

- (1) provide notice to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a)l; and
- (2) provide notice to the consumer explaining the reason for the adverse action.

(b) The reason provided under subsection (a) must be provided in sufficiently clear and specific language so that an individual can identify the basis for the insurer's decision to take an adverse action. The notice must include a description of not more than four (4) factors that were the primary influences of the adverse action. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet requirements of this subsection. A standardized credit explanation provided by a consumer reporting agency or other third party vendor meets the requirements of this section.

**Sec. 19. (a)** An insurer that uses an insurance score to underwrite and rate risks shall file the insurer's scoring models or other scoring processes with the department.

(b) A third party may file a scoring model or scoring process on behalf of an insurer.

(c) A filing that includes insurance scoring may include loss experience justifying the use of credit information.

(d) A filing related to credit information is confidential.

**Sec. 20. (a)** An insurer shall indemnify and defend an insurance producer and hold an insurance producer harmless from and against liability, fees, and costs arising out of or related to the actions, errors, or omissions of the insurance producer if the insurance producer:

- (1) obtains or uses credit information or insurance scores for an insurer;
- (2) follows the instructions of or procedures established by the insurer described in subdivision (1); and
- (3) complies with applicable laws and regulations.

(b) This section does not provide a consumer with a cause of action that does not exist in the absence of this section.

**Sec. 21. (a)** A consumer reporting agency may not provide or sell data or lists that include information submitted in conjunction

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1 with:

2 (1) an insurance inquiry about a consumer's credit  
3 information; or

4 (2) a request for a credit report or insurance score;  
5 including the expiration dates of an insurance policy or other  
6 information that may identify periods during which a consumer's  
7 insurance expires and the terms and conditions of the consumer's  
8 insurance coverage.

9 (b) The restrictions under subsection (a) do not apply to data or  
10 lists a consumer reporting agency supplies to an:

11 (1) insurance producer from whom the information was  
12 received;

13 (2) insurer on behalf of which the insurance producer  
14 described in subdivision (1) acted; or

15 (3) affiliate or a holding company of the insurer described in  
16 subdivision (2).

17 (c) This section does not prohibit an insurer from obtaining a  
18 claim history report or a motor vehicle report.

19 SECTION 2. [EFFECTIVE JULY 1, 2003] Notwithstanding  
20 IC 27-2-21, as added by this act, IC 27-2-21, as added by this act,  
21 applies to a personal insurance policy that is issued, delivered,  
22 amended, or renewed after March 31, 2004.

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